IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2395 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MEHBOOBSHA MOHAMMEDSHA FAKIR

Versus

STATE OF GUJARAT

---

Appearance:

1. Special Civil Application No. 2395 of 2002

MR MM TIRMIZI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

---

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 17-1-2002 passed by the Police Commissioner, Ahmedabad City, and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that the detention order has been passed relying upon two offences registered against the petitioner under Prohibition Act. Drawing my attention towards page 25 of the compilation which is the grounds of detention, Mr.Tirmizi has contented that when the order of detention was passed, the detenu was in judicial custody which aspect ought to have been considered by the authority while passing the detention order. In this connection, he has relied upon the case of Amritlal and Other Vs. Union Govt. Through Secy., Ministry of Finance and Others, AIR 2000 S.C. 3675 wherein it was held at Head note as under:

> "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (46 of 1988), S.3--Satisfaction of detaining authority--"Likelihood of detenu moving an application for bail"--not sufficient--It is different from "Likelihood to be released on bail"".

4. It seems that there is non-application of mind on the part of detaining authority in passing the detention order as the detenu was in judicial custody when the order of detention was passed which aspect has not been considered by the authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 17-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Mehboobsha Mohammedsha Fakir is ordered to be set at liberty forthwith, if not required in any other case. Learned advocate for the petitioner assures that the detenu will stay away from Ahmedabad for a period of fifteen days from the date of release. Rule is made absolute accordingly with no order as to costs. Direct service is

permitted.

(R.P.DHOLAKIA,J.)

radhan/